



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

SLR:KMA; 2018V00809

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November 28, 2018

BY ECF

Honorable Lois Bloom
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Ty Clevenger v. U.S. Department of Justice, *et al.*,
Civil Action No. 18-CV-01568 (WFK) (LB)

Dear Judge Bloom:

Defendants respectfully submit this letter in advance of the telephonic conference scheduled for December 5, 2018, in this Freedom of Information Act ("FOIA") action to supplement their prior status reports dated August 22, 2018 (Dkt. #15) and October 9, 2018 (Dkt. #16). Defendants provide the following updates for the FOIA requests in the First Amended Complaint (Dkt. #9) to which Defendants had not yet finally responded as of the October 11, 2018 telephonic status conference with Your Honor:

Department of Justice ("DOJ") Criminal Division – The DOJ Criminal Division's only outstanding response was to the second request in Plaintiff's March 7, 201[7] letter. *See* First Amended Compl. ¶ 7.

On October 11, 2018 (after the telephonic conference), the DOJ Criminal Division emailed to Plaintiff its final response, which enclosed seven pages of responsive records with certain information redacted pursuant FOIA exemptions 6 and 7(C), 5 U.S.C. §§ 552(b)(6) & (7)(C). The Criminal Division's final response also informed Plaintiff that it had referred the other three pages of responsive records that it had located to to the National Security Division ("NSD") for processing and direct response to Plaintiff.

On October 29, 2018, the DOJ NSD released to Plaintiff the three referred pages with certain information redacted pursuant to FOIA exemptions 5, 6, and 7(C), 5 U.S.C.

§§ 552(b)(5), (6) & (7)(C).

Office of Information Policy (“OIP”) – As of the October 11, 2018 telephonic status conference, the OIP had not yet provided final responses to the third and fourth requests in Plaintiff’s March 7, 201[7] letter (*see* First Amended Compl. ¶ 7) or to Plaintiff’s FOIA request dated September 1, 2017. *See* First Amended Compl. ¶¶ 9-12.

In an interim response dated October 9, 2018, the OIP had released 37 pages of records with redactions pursuant to FOIA exemptions 5 and 6, 5 U.S.C. §§ 552(b)(5) & (6). Most of these documents were responsive to Plaintiff’s FOIA request dated September 1, 2017. In addition, the OIP referred other documents that it had located to another agency for review and consultation.

After review by the consulting agency was completed, the OIP released to Plaintiff via email on November 21, 2018, its final response with an additional 341 pages of responsive records with certain information redacted pursuant to FOIA exemptions 6, 7(A), and 7(C), 5 U.S.C. §§ 552(b)(6), (7)(A), & (7)(C). These documents are responsive to the third and fourth requests in Plaintiff’s letter dated March 7, 201[7].

The OIP will not be making any further response to Plaintiff’s FOIA requests.

Federal Bureau of Investigation (“FBI”) – The remaining outstanding responses concerned the requests numbered 2 and 3 in Plaintiff’s letter dated October 1, 2017 (*see* First Amended Complaint ¶ 13), to which the FBI had released an initial partial response on October 9, 2018.

Regarding request 2, the FBI had located 236 pages of responsive records, and released four of those pages in their entirety to Plaintiff on October 9, 2018. The FBI referred the other 232 pages for review to another agency, which recently provided its consultation response. The FBI anticipates completing its processing of these records and releasing its final response to Plaintiff by December 10, 2018.

With respect to request 3, the FBI referred the 50 pages of responsive documents it had located to another agency for review. After receiving that agency’s input, the FBI released its second interim response on November 9, 2018. The FBI released 42 pages of those records with redactions pursuant to FOIA exemptions 5, 6, 7(C) and 7(E), 5 U.S.C. §§ 552(b)(5), (6), (7)(C), (7)(E), and withheld the other eight pages in their entirety pursuant to FOIA exemption 5, 5 U.S.C. § 552(b)(5). This is the FBI’s final response to request 3.

In conclusion, Defendants have provided final responses to all of Plaintiff’s FOIA requests with the sole exception of the one request to the FBI (discussed above) as to which a final response will be released soon.¹

¹ In his five letters identified in the First Amended Complaint, Plaintiff made a total of 49 separate FOIA requests to the various Defendants.

Thank you for Your Honor's consideration of this submission.

Respectfully submitted,

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